U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

Public Copy

File: [redacted] Office: Texas Service Center Date: SEP 14 2000

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(A)

IN BEHALF OF PETITIONER: [redacted]

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be rejected, the matter will be reopened and considered on certification, and the petition will be denied.

The Form I-140 petition identifies [redacted] as the petitioner. The petition, however, was signed not by [redacted] but by the alien himself. Therefore, the alien and not [redacted] shall be considered to be the petitioner. We must, therefore, reject the appeal filed by Ms. El-Samad because she is not a party to this proceeding.

That being said, the record contains notations to the effect that the director was aware of the above anomaly, but chose not to mention it in the denial notice. The denial notice, in turn, was delivered to [redacted] rather than to the self-petitioning alien. Thus, the director deprived the lawful petitioner the opportunity to file a timely appeal. With these circumstances in mind, this office hereby reopens the proceeding and will consider the matter on certification, pursuant to 8 C.F.R. 103.4(a).

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(A), as an alien of extraordinary ability. The petitioner seeks employment as a research officer for [redacted], which is a network and systems integration, management and marketing research firm in Oklahoma City, Oklahoma. The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

Section 203(b) of the Act states, in pertinent part, that:

> (1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> > (A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --
> >
> > > (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
> >
> > > (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry to the United States will substantially benefit prospectively the United States.

As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the Service regulation at 8 C.F.R. 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

The regulation at 8 C.F.R. 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. In the initial submission, [redacted] did not specify which of the criteria the evidence was intended to meet. On appeal, [redacted] claims to have satisfied four of the criteria.

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

[redacted] states that the petitioner "has been awarded first winner award in the State of Oklahoma by The U.S. Small Business Administration." [redacted] appears to refer to a 1990 certificate in the record which reads, in pertinent part:

U.S. Small Business Administration
District Winner
Presented to [the petitioner]
Region VI Contestant
Small Business Institute
Oral Competition
Dallas Texas

Region VI Encompasses Arkansas, Louisiana, New Mexico, Oklahoma, and Texas

This is not a national award, but a regional one pertaining to five states in the south central United States. Furthermore, the petitioner has not established the overall importance of the Small Business Institute Oral Competition.

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

[redacted] states that the petitioner "has been an active member of [the] American Management Association." The record contains nothing to establish that the American Management Association requires outstanding achievements of its members as a condition for membership.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

[redacted] states on appeal that the petitioner's "writings and references show major contributions in business and education," but does not elaborate. The statute and regulations demand sustained national and international acclaim; thus, the petitioner must show that his contributions are recognized at the national or international level, rather than merely among individual witnesses selected by the petitioner.

The record contains several letters of recommendation from employers and instructors. Nothing in these letters indicates that the petitioner is nationally or internationally known for his work, or that he has made major contributions in his field.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

[redacted] asserts on appeal that the petitioner "has written several outstanding research reports of which some are to be published soon." In Matter of Katigbak, 14 I & N Dec. 45 (Reg. Comm. 1971), the Service held that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. If these reports had not yet been published even when the appeal was filed, then clearly they were unpublished as of the petition's filing date. Furthermore, if the reports have not been published, it is clearly premature to characterize them as "outstanding," except in the subjective opinion of the few who have seen the unpublished reports.

With regard to the petitioner's writings which precede the petition's filing date, these works appear to be graduate student research papers rather than published articles.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

The only evidence regarding the petitioner's remuneration is Ms. [redacted] job offer letter, indicating that [redacted] intends to pay the petitioner a starting salary of $22,000 per year. It appears to be highly unlikely that this is among the highest salaries commanded in the petitioner's field.

Beyond the above criteria, [redacted] notes on appeal that the petitioner "has more than (10) ten years experience of research and teaching." Length of experience is not an indicator of sustained national or international acclaim. At issue is what the petitioner has accomplished, rather than how long he took to accomplish it.

The petitioner fails to explain the significance of much of the evidence in the record. For instance, a letter from the State of Oklahoma Office of Personnel Management indicates that the petitioner applied for a position as a statistical analyst, and was ranked fourth out of four candidates for the position. Another letter ranked the petitioner sixth out of seven. The record shows that the state ultimately offered the petitioner a position, but the employment offer appears to have expired because the petitioner's immigration status at the time did not permit him to accept permanent employment.

The record also contains documentation of the petitioner's Oklahoma teaching certification, a field with no discernible bearing on market research. The petitioner also fails to explain the relevance of a certificate showing that the petitioner took a one-hour training course regarding blood-borne pathogens.

The "extraordinary ability" visa classification is, by law, reserved for aliens who have demonstrated sustained acclaim at the national or international level. The record in this matter contains no evidence to suggest that the petitioner has earned a degree of recognition approaching the statutory threshold. Much of the evidence has nothing to do with marketing research at all, let alone places the petitioner at the top of that field. The petitioner has done little more than establish the petitioner's educational credentials and employment history.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien's entry into the United States will substantially benefit prospectively the United States.

Review of the record, however, does not establish that the petitioner has distinguished himself as a marketing research officer, or in any other field, to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. There is no evidence that the petitioner's achievements set him significantly above almost all others in his field. It has not been shown that the petitioner's entry would substantially benefit prospectively the United States. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not sustained that burden. Accordingly, the petition will be denied.

ORDER: The director's decision of October 27, 1999 is affirmed. The petition is denied.